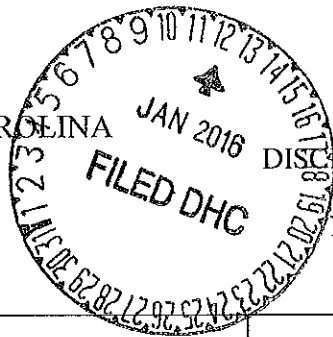


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
16 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

R. KELLY CALLOWAY, JR., Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, R. Kelly Calloway, Jr. ("Calloway" or "Defendant"), was admitted to the North Carolina State Bar on August 20, 1993, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Calloway was engaged in the practice of law in Hendersonville, Henderson County, North Carolina, doing legal business as Calloway & Associates Law Firm, P.C. ("firm").

4. In addition to Calloway himself, the firm had one or more employees between the first quarter of 2006 through the first quarter of 2012 ("the relevant time period").

5. Calloway had signature authority on all bank accounts maintained by his firm.

6. Calloway signed the checks with which the firm paid its employees.

7. During the relevant time period, Calloway controlled the funds in all bank accounts maintained by the firm and made decisions regarding how and when such funds in those accounts would be deposited and/or disbursed.

8. When the firm paid its employees during the relevant time period, Calloway would withhold the appropriate funds from the employees' paychecks to pay federal income, Social Security and Medicare taxes to the Internal Revenue Service ("IRS"), and would pay his employee and himself the net amount due.

9. During the relevant time period, the withheld funds remained in the firm's operating account and were not paid by Calloway to the IRS.

10. Calloway understood that from the time the funds were withheld from employees' paychecks until the funds were ultimately to be paid to the IRS, he and the firm had a fiduciary obligation to hold the funds in trust for the benefit of the IRS.

11. Nevertheless, Calloway used such fiduciary funds to pay the firm's business expenses and his personal expenses, including his membership at the Hendersonville Country Club (\$2,643.02 in 2008; \$3,163.05 in 2009; \$1,997.18 in 2010; and, \$3,670.19 in 2011).

12. Calloway and his firm failed to timely file Federal Quarterly Tax Returns for all quarters from 2006 to the third quarter of 2011.

13. In 2012, the IRS filed Federal Tax Lien Notices ("liens") against Calloway and his firm indicating that the firm owed the IRS approximately \$123,476.12 in employee payroll withholding taxes, interest, and penalties for the relevant time period.

14. The liens also showed Calloway and his firm owed the IRS approximately \$6,453.91 in annual federal unemployment taxes ("FUTA") for the tax years of 2006, 2007, 2008 and 2009.

15. Calloway failed to file returns and pay state withholding taxes to the North Carolina Department of Revenue ("Department of Revenue") for the first, second, and third quarters of 2009, totaling approximately \$2,700.00.

16. On May 20, 2008, the Department of Revenue levied Calloway's bank account for \$2,983.44.

17. The State Bar served Calloway with a Letter of Notice in Grievance File No. 13G0917 on October 24, 2013.

18. Calloway's response to the Letter of Notice was due on Friday, November 8, 2013.

19. Calloway requested and was granted an extension of time until November 18, 2013 to respond.

20. Calloway neither responded by the deadline nor requested a further extension.

21. On December 6, 2013, the State Bar sent Calloway a letter encouraging him to respond no later than December 16, 2013.

22. Calloway again did not respond or request a further extension of time.

23. On or about January 3, 2014, staff counsel contacted Calloway and he indicated that he had not been able to respond because of his work load and the holidays, but that he would send his response by the next week.

24. The State Bar did not receive Calloway's response until February 10, 2014.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) & 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By using the fiduciary funds to pay the firm's business expenses and his personal expenses, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- b) By willfully failing to pay over the federal taxes owed to the IRS in violation of 26 U.S.C. § 7202, and by willfully failing to file returns, supply information, or pay the owed taxes in violation of 26 U.S.C. § 7203, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- c) By willfully failing to pay over taxes owed to the North Carolina Department of Revenue for the first, second, and third quarters of 2009, and by willfully failing to file the necessary returns or supply information to the North Carolina Department of Revenue for the first, second, and third quarters of 2009 in violation of N.C. Gen. Stat. § 105-236(8) & (9), Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- d) By failing to timely respond to the State Bar's Letter of Notice, even after extensions of time to do so, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

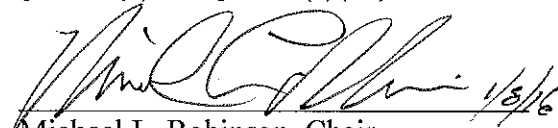
This the 12<sup>th</sup> day of January 2016.



Barry S. McNeill  
Deputy Counsel  
State Bar No. 8887  
The North Carolina State Bar  
P.O. Box 25908  
Raleigh, NC 27611  
919-828-4620

Attorney for Plaintiff

Signed pursuant to 27 N.C. Admin. Code 1B  
§ .0113(n) and §.0105(a)(10).



Michael L. Robinson, Chair  
Grievance Committee